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REPORT ON RECENT ETS AND IAQ DEVELOPMENTS

August 12, 1994

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REPORT ON RECENT ETS AND IAQ DEVELOPMENTS

IN THE UNITED STATES

REGULATORY AND LEGISLATIVE MATTERS

103D CONGRESS

[1] Indoor Air Act Marked Up and Approved in House Committee

On August 9, 1994, the House Committee on Energy and Commerce approved the Indoor Air Act (H.R. 2919) by voice vote. Originally introduced in August 1993 by Representative Joseph Kennedy II (D-Mass.), the bill was amended in subcommittee on August 3, 1994, with a substitute introduced by Representative Henry Waxman (D-Cal.). The amendment significantly scales back the requirements of the original bill, but it does authorize EPA to take certain action with respect to indoor air. Further details about Waxman's substitute bill appear in issue 76 of this Report, July 15, 1994.

The bill, as marked up, would mandate EPA to conduct indoor air studies and promote educational efforts and voluntary actions as a means of protecting the public from indoor air health risks. The Director of NIOSH would be authorized to implement a building assessment program to assist employers and employees on reducing significant indoor air health risks. ETS is not mentioned in the bill.

Republicans on the committee apparently opposed the bill, arguing that it will give EPA broad authority over indoor air and permit the development of what are referred to as guidelines, but could be implemented as regulations. According to Representative Thomas Bliley, Jr. (R-Va.), the bill would "set up a conflict between EPA and OSHA," which published a proposed rule on indoor air and indoor smoking in April 1994. Opposing the bill are some of the nation's largest corporations, including Dow Chemical, Exxon, Monsanto Corp. and AT&T.

According to Waxman, the bill is supported by the American Lung Association, BOMA, the Institute of Real Estate Managers, the National Association of Home Builders and the National Association of Realtors. The bill has been reported to the full House for consideration. According to Waxman, this bill is expected to pass the House. Indoor air legislation has already been approved in the Senate (S. 656). *See PR Newswire* and *States News Service*, August 3, 1994.

The Congress is scheduled to adjourn for the year on October 7.

[2] Subcommittee Approves Bill To Expand Airline Smoking Bans

On August 10, 1994, the House Aviation Subcommittee approved a bill that would ban smoking on any flight between the continental United States and Alaska or Hawaii (H.R. 4495). In addition, the bill would ban smoking between the United States and foreign destinations. Under existing law, smoking is permitted on such flights.

Sponsored by Representative James Oberstar (D-Minn.), the Airliner Cabin Air Quality Act of 1994 would apply to both foreign and domestic airlines. The Department of Transportation would facilitate the implementation of the new rules. The bill now goes to the full House Committee on Public Works and Transportation for consideration.

[3] Education Bill Sent to Conference Committee; Returned to House

On August 2, 1994, the education bill to which Representative Richard Durbin's (D-Ill.) PRO-KIDS legislation had been attached (H.R. 6) was passed as amended in the Senate and sent to the conference committee for reconciliation with the measure passed by the House.

The PRO-KIDS amendment would restrict smoking to separately ventilated areas of federally funded

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facilities providing services to elementary or secondary school students. It would be less restrictive than a law signed by President Clinton in March 1994, banning smoking in such facilities. "Pro-Children Act of 1994," sections 1041-1044, P.L. 103-227 ("Goals 2000: Educate America Act").

[4] Comments Added to Record on Risk Assessment Legislation

On July 22, 1994, Representative Dick Zimmer (R-N.J.) introduced a document into the Congressional Record that criticizes the way that the "EPA selectively uses risk assessments to dictate environmental policy to the public instead of to inform them of their choices." Specifically cited in the document is the EPA Risk Assessment on ETS. Zimmer's remarks and the document in question, an article by Cesar Conda of the Alexis de Tocqueville Institution, were directed at the legislation introduced by Zimmer in September 1993, the "Environmental Risk Reduction Act of 1993" (H.R. 3111; S. 110), which would establish guidelines to ensure consistency and technical quality in risk assessments.

With regard to the ETS risk assessment, the Conda article states, "the EPA's recent finding that 'environmental tobacco smoke' — or second-hand smoke — is dangerous to human health is based on a threshold or risk assessment two times lower than what the agency normally uses for other substances. All too often, politics get in the way of sound science." Zimmer, in his remarks, credited the Institution with playing "a major role in educating members, the press and the general public about the need to rationalize environmental policy and reduce excessive regulatory costs." *See* 140 *Congressional Record* E1547 (July 22, 1994).

Meanwhile, the Institution reportedly scheduled a briefing on its new report, "Science, Economics and Environmental Policy: A Critical Examination," on August 11, 1994. The report apparently focuses on ETS, radon, pesticides and the Superfund cleanup. Speakers at the briefing were to include Representative Peter Geren (D-Tex.) and several scholars. *See Reuters Daybook*, August 5, 1994.

[5] Senate Gets History Lesson on Tobacco

On July 20, 1994, Senator Wendell Ford (D-Ky.) began a series of talks on the Senate floor about the historic, economic and social significance of tobacco in the United States. "Over the past few months, it seems that everybody has become a tobacco expert," Ford said. They claim to know all of the possible health effects, and which tobacco company did what and when. A few Congressmen and Senators would like you to believe they are playing David to the tobacco company's Goliath. But the real David is the tobacco farmer, who is being forced to fight a public relations Goliath." *See* 140 *Congressional Record* S 10232, S 10522 (July 20, 1994).

Occupational Safety and Health Administration (OSHA)

[6] OSHA Watching Rulemaking Activities in Maryland

A recent Bureau of National Affairs (BNA) article reports that on August 1, 1994, OSHA officials visited Maryland's Department of Labor and Industries office "in hopes of gathering data and readying the federal agency for its own attempt to ban smoking nationwide." An OSHA official reportedly told BNA that discussions between the two agencies included the possibility of "sharing data and keeping OSHA posted" as to efforts to challenge the Maryland ban. OSHA Administrator Joseph Dear reportedly said the federal agency is closely watching the Maryland rulemaking process as well as the recently-filed lawsuits relating to the rule. Dear apparently said he expects a similar battle to be waged by opponents to OSHA's proposed rule on indoor air and indoor smoking, and that observance of the months of hearings on Maryland's rule provided valuable insight into the likely strategies opponents will use to combat the federal proposal.

While OSHA officials note that its proposed rulemaking process will be more complicated than Maryland's because it is also considering the broader issue of indoor air, Dear told BNA that opponents have and will "show their cards." Maryland's Deputy Commissioner of Labor and Industries reportedly said that OSHA officials reviewed materials that had been submitted to the Maryland state docket during its rulemaking process and have asked for copies of pleadings and documents that have been filed in the courts. *See* BNA *Occupational Safety & Health Daily*, August 4, 1994.

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Meanwhile, OSHA's schedule for the proposed rulemaking remains the same. The August 5 deadline for submitting notices of intention to appear at the public hearings has passed, and the August 13 deadline for public comments has not changed. Public hearings are scheduled to begin in Washington, D.C., on September 20. As of August 11, 120 notices of intention to appear at the hearing had been docketed by OSHA. The public comment docket continues to grow and currently numbers 42,000.

ENVIRONMENTAL PROTECTION AGENCY (EPA)

[7] SAB Committee Discusses Reproductive Toxicity Risk Guidelines

On July 19, 1994, the Environmental Health Committee of EPA's Science Advisory Board (SAB) discussed and edited EPA's guidance document entitled *Guidance for Reproductive Toxicity Risk Assessment.* The document outlines procedures for EPA to follow in evaluating chemical test data for the potential of a substance to cause reproductive toxicity and disrupt pregnancy outcomes.

Issues addressed during the meeting included: (i) whether the document should recognize populations that are particularly sensitive to toxins, and whether it should characterize a range of risks across populations; (ii) whether hazard identification guidelines should be separated from dose response evaluations; and (iii) whether the document should further discuss what to do when there is no data on how a substance produces a given effect.

Designated members of the committee will draft recommendations for revisions to the guidelines on the basis of the discussion. After the committee approves the draft report it will be submitted to the SAB executive committee at its October 1994 meeting.

[8] Carbon Monoxide Standards to Remain Unchanged

Relying in part on an analysis of indoor ETS exposures, the EPA has decided not to revise its standards relating to carbon monoxide (CO) exposure in outdoor (ambient) air. According to the EPA, revision of the ambient air exposure standards, which were set in 1971, would not protect individuals from indoor CO emissions from ETS and gas stoves. In addition, the EPA found that existing data on CO health effects did not justify lowering the standards. 59 *Federal Register* 38906 (August 1, 1994); *see* BNA *Chemical Regulation Daily*, August 2, 1994.

STATE AND LOCAL GOVERNMENTS

[9] New York AG Criticizes Manufacturers' Ads About ETS; Author of Study Challenges Accuracy of Ads

New York's Attorney General, G. Oliver Koppell, conducted a press conference on July 27, 1994, at which he condemned advertisements about smoking and ETS by Philip Morris and R.J. Reynolds as deceptive and confusing. Koppell, who is running for re-election, apparently stated that an R.J. Reynolds' ad about ETS gave a "pseudo-scientific basis to say that secondhand smoking was not dangerous." He referred to ETS as an extremely dangerous Group A carcinogen, and reportedly asked, "Are you going to believe the EPA or the tobacco industry?"

Koppell also evidently took issue with an R.J. Reynolds' ad suggesting that the government interferes with people's freedom when it passes antismoking legislation. According to Koppell, antismoking legislation protects the environment. He also reportedly said he supports laws passed in Massachusetts and Florida that permit those states to seek reimbursement from tobacco companies for costs purportedly incurred treating people with smoking-related illnesses. *See United Press International*, July 27, 1994.

Meanwhile, the authors of a study referred to in one of the advertisements run by Philip Morris wrote a letter to the editor of the *Los Angeles Times* claiming that the tobacco company's use of their study to support its claims about the "flaws in the EPA's use of science" was misleading. The letter states, "Evidence presented to support Philip Morris' contention relied heavily on one finding of our study of exposures to environmental tobacco smoke (ETS) which, in fact, was never used as evidence in the EPA report."

The authors of the letter, Mary Overpeck, an epidemiologist with the National Institute of Child Health and Human Development and Abigail Moss, a statisti-

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cian with the Centers for Disease Control and Prevention, state that their study "did not address respiratory conditions and, therefore, was not used as evidence of respiratory damage from ETS." The authors conclude, "If other studies cited in the EPA report were as 'misrepresented' as was our study, then the 'facts' presented in the Philip Morris ads are highly suspect." *See Los Angeles Times*, August 3, 1994.

[10] Court Invalidates Smoking Bans in Columbus, Ohio Counties

On August 9, 1994, an Ohio state judge ruled that newly imposed smoking bans and restrictions in Columbus and Franklin Counties are invalid. The measures, imposed by the Health Boards in the two counties, were to apply to restaurants, public buildings and other public places, had been challenged in court by a consortium consisting of 32 restaurants, bowling alleys and other businesses. In invalidating the bans, the court ruled the boards exceeded their authority in enacting the laws saying they have only authority to set regulations. The court also said that the board discriminated by allowing smoking in all or parts of some establishments such as bars, but not in others. According to a press report, the decision is expected to affect similar smoking laws instituted by health boards in other Columbus suburban areas. *Cookie's Diner Inc. v. Columbus Board of Health*, (Franklin County Municipal Court, Columbus, Ohio). *See The Cincinnati Post*; *United Press International*; and *The Wall Street Journal*, August 10, 1994.

[11] California Cities Delay Enactment of Antismoking Ordinances

According to a press report, some cities and counties in California have delayed adopting tough antismoking ordinances due in part to the pending ballot initiative that would preempt such ordinances if approved by California voters in November 1994. For example, decisionmakers in Alameda have decided to wait until after the November election before enacting a law that would ban smoking in restaurants, workplaces and bars. Local governing bodies in Santa Barbara County and Morro Bay withdrew antismoking proposals. A.B. 13, which is scheduled to take effect on January 1, 1995, restricts smoking to separately ventilated areas in most workplaces in the state.

Antismoking activists are reportedly disappointed about the failure of local governments to move ahead with tough smoking restrictions. According to one such activist, "Local ordinances have always been the backbone of the nonsmokers' rights movement. We think cities and counties should just put these state measures out of their minds."

Other communities, however, are evidently moving ahead regardless what happens on the state level. For example, as of August 1, Oakland phased in all of its smoking restrictions, including a ban on smoking in restaurants. On July 12, Santa Cruz reportedly toughened its antismoking ordinance, effectively banning smoking everywhere except in bars and private residences. *See The San Francisco Chronicle*, August 1, 1994.

ETS-RELATED LITIGATION BROUGHT BY CIGARETTE MANUFACTURERS

[12] *H&G Restaurants, Inc., et al. v. Fogle, et al.* (Circuit Court, Talbot County, Maryland) (filed July 22, 1994)

On July 29, 1994, the Maryland Court of Special Appeals affirmed the July 27 ruling of the Circuit Court of Talbot County, Maryland, which temporarily halted enforcement of workplace smoking restrictions promulgated by the Maryland Division of Labor and Industry. The July 27 restraining order will remain in effect until both sides have an opportunity to be heard on plaintiffs' request that enforcement of the smoking restrictions be enjoined until the judge reaches a final decision in the case. That hearing was scheduled for August 11-12. Reports on the hearings are not yet available. *See* BNA *Occupational Safety and Health Daily*, August 4, 1994.

The plaintiffs contend that the smoking regulations, which ban smoking in virtually all Maryland workplaces, are invalid and unenforceable. They seek a permanent injunction prohibiting the enforcement of the regulation. The plaintiffs are a consortium of Maryland business owners, trade associations, and cigarette manufacturers The American Tobacco Company, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation and Lorillard Tobacco Company. Further details about the case appear in issue 77 of this Report, July 29, 1994.

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ETS-RELATED LITIGATION AGAINST CIGARETTE MANUFACTURERS

[13] *Bluitt*: Defendants File Reply Brief in Support of Motion for Judgment on the Pleadings

The defendants filed their reply brief in support of their motion for judgment on the pleadings on August 4, 1994. Argument on the motion has not been set.

Plaintiffs in this action allege Willie Ruth Bluitt was a nonsmoker who died of lung cancer as a result of workplace exposure to environmental tobacco smoke. Defendants in the action are the six major U.S. cigarette manufacturers. *Bluitt v. R.J. Reynolds Tobacco Co., et al.* (U.S. District Court, Northern District, Texas) (filed August 30, 1993).

[14] *Broin*: Plaintiffs Continue Robert Gertenbach's Deposition

The plaintiffs continued their deposition of Robert Gertenbach on August 4, 1994. Gertenbach is a former executive of the Council for Tobacco Research.

The deposition of Joseph Taddeo, which was scheduled for August 8, has been postponed; a new date has not been set. Taddeo is the Chief Executive Officer of defendant United States Tobacco.

Defendant Tobacco Merchants Association (TMA) is scheduled to file its opening brief in support of its appeal to the Third District of the Florida Court of Appeal on August 19. TMA's appeal is from the trial court's order denying its motion to dismiss based on the court's lack of personal jurisdiction.

At issue in this case are the claims of 28 flight attendants allegedly injured by occupational exposure to ETS. In addition, the husband of one of the flight attendants claims loss of consortium. The 28 attendants purport to represent a class of approximately 60,000 other attendants.

Injuries alleged by the putative class representatives include lung cancer, breast cancer and unspecified respiratory ailments. Plaintiffs further allege that occupational exposure to ETS on board aircraft causes at least 22 diseases and a reasonable fear of contracting such diseases. The defendants are the six major U.S. cigarette manufacturers (plus entities related to some of the manufacturers), United States Tobacco Company, Dosal Tobacco Corp., the Council for Tobacco Research, The Tobacco Institute, and three trade associations. *Broin, et al. v. Philip Morris, et al.* (Circuit Court, Dade County, Florida) (filed October 31, 1991).

[15] *Butler1*: Defendants File Response to Plaintiffs' Motion to Dismiss Case

On August 3, 1994, the defendants in the personal injury case (*Butler1*) filed their response in opposition to the plaintiffs' motion to dismiss the case. In their response, the defendants ask the court to impose certain terms and conditions on the dismissal order to mitigate the prejudice to defendants in plaintiffs' avoidance of "the discovery obligations and substantive legal rulings that [the court in *Butler1*] has imposed through its orders."

Burl Butler and his wife, Ava Dean Butler, filed suit in 1992 contending that Mr. Butler, a self-employed barber, developed lung cancer as a result of his exposure to environmental tobacco smoke. The defendants in this case consist of the six major U.S. cigarette manufacturers and several local retailers. *Butler v. R.J. Reynolds Tobacco Company, et al.* (Circuit Court, Hinds County, Mississippi) (filed October 21, 1992). Burl Butler died on May 7, 1994. Five days later, a wrongful death case was filed in Jones County by Mr. Butler's estate, alleging that his death was caused by exposure to environmental tobacco smoke. Defendants in the wrongful death case are the six major U.S. cigarette manufacturers, their holding companies, The Tobacco Institute, the Council for Tobacco Research, Hill & Knowlton, a local distributor of cigarettes, and Does. *Butler v. Philip Morris, Inc., et al.* (Circuit Court, Jones County, Mississippi) (filed May 12, 1994). Both cases are pending.

ETS/IAQ LITIGATION NOT INVOLVING CIGARETTE MANUFACTURERS

PRISONER CASE

[16] *Small v. Hunt*, 1994 U.S. Dist. LEXIS 10039 (U.S. District Court, Eastern District, North Carolina) (decided June 28, 1994)

In a case involving prison overcrowding in North Carolina, a U.S. District Court indicated that the state

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and a class of prison inmates previously reached an agreement which required improvements to ventilation and the establishment of some restrictions on smoking in about half of the 97 facilities in the state. The agreement restricts smoking to one of two day rooms for each sleeping area, and requires the provision of at least 10 cubic feet of outside or recirculated filtered air per minute per occupant and the institution of maintenance and repair procedures for ventilation systems. At issue in the case was whether the state could exceed agreed upon prison capacity percentages due to a rapid rise in prison admissions.

WORKPLACE: WORKERS' COMPENSATION

[17] *Linden v. Face Lifters, Ltd.*, 1994 WL 379625 (Pennsylvania Workmen's Compensation Appeal Board) (decided July 18, 1994)

The Pennsylvania Workmen's Compensation Appeal Board has denied a request for benefits filed by a woman who claimed that she became totally disabled when ETS and stress caused her to suffer an allergic reaction in the course of her employment. Although the administrative law judge found that the claimant did work in a "smoky environment" and that she was sensitive to ETS, benefits were denied because the claimant and her husband owned the business that employed the claimant and could have made a smoke-free environment available to the claimant. Work which the claimant was capable of performing was, according to the Board, available to her in a smoke-free environment, at no loss of wages.

WORKPLACE: UNEMPLOYMENT COMPENSATION

[18] Nonsmoking Salesman Wins Benefits After Quitting Job

According to a press report, an administrative law judge awarded unemployment compensation benefits to a Des Moines, Iowa, furniture salesman who alleged that he had been forced to quit his job on account of the smoking of fellow employees. The judge reportedly stated that ETS in the workplace created "unsafe, intolerable and detrimental working conditions attributable to the employer."

The salesman, David Chico, is a former smoker who had apparently worked at the furniture store for about one year before quitting. Evidently, nearly all of his fellow employees smoked, and the nonsmoking section of the workplace required by Iowa law was not being used. The owner of the store reportedly attributed Chico's dissatisfaction with the job to his sales commissions. *See The Atlanta Journal and Constitution* and *Newsday*, August 3, 1994.

IAQ: CARPET EMISSIONS

[19] *Fitzgerald v. Mannington Carpets, Inc.*, 1994 U.S. Dist. LEXIS 10548 (U.S. District Court, Maryland) (decided July 12, 1994)

A U.S. District Court has denied in part and granted in part the motions filed by a carpet manufacturer whose product allegedly caused the plaintiffs to develop multiple chemical sensitivity after it was installed in the retail stores they own. Mannington Carpets, Inc., filed three motions, one for a more definite statement, a second to dismiss three of five counts, and a third to strike the prayers for damages.

Plaintiffs Charles and Marie Fitzgerald, who alleged that the carpet's "off-gassing" caused their injuries, included in their complaint claims of strict liability, negligence, misrepresentation or fraud, violation of the federal Consumer Product Safety Act, and loss of consortium. The court agreed with Mannington that the plaintiffs do not have a private cause of action under the Consumer Product Safety Act for violations of the Act and dismissed that count of the complaint. The defendant's remaining requests for relief, which were characterized by the court as "hyper-technical," were denied.

LEGAL ISSUES AND DEVELOPMENTS

[20] "Smoking Outside of Workplace Sparks New 'Civil Rights' Laws," G.M. Roman, *Rocky Mountain News*, July 31, 1994

This article discusses the Colorado law that prohibits employment discrimination against those who smoke outside of the workplace. The author notes that the Colorado Civil Rights Commission has declined to

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accept jurisdiction over claims involving "smoking discrimination." Apparently, the law gives smokers the right to take their claims of employment discrimination directly to court without first exhausting administrative remedies, unlike those who have purportedly suffered other forms of discrimination.

SCIENTIFIC/TECHNICAL MATTERS

UPCOMING SCIENTIFIC MEETINGS

[21] Midwest Regional Environmental Conference, EIA/CEM, Indianapolis, Indiana, September 8-9, 1994

The Midwest Regional Environmental Conference is sponsored by the Environmental Information Association (EIA) and the Corporation for Environmental Management (CEM). On the second day of the program, regulatory and legislative issues and indoor air quality/industrial hygiene will be covered in separate "tracks." There will also be a professional development seminar on IAQ.

[22] Symposium on Methods for Characterizing Indoor Sources and Sinks, ASTM Committee D-22 on Sampling and Analysis of Atmospheres and its Subcommittee D22.05 on Indoor Air, Washington, D.C., September 25-28, 1994

IAQ researchers and practitioners are expected to present papers at this symposium, which will include review and discussion of approaches for characterizing emissions from indoor sources (materials and products), and the interaction of emissions with indoor sinks. Chamber technology, HVAC systems, and testing protocols are among the featured topics.

[23] The Role of Ventilation, Air Infiltration and Ventilation Centre (AIVC), Buxton, England, September 27-30, 1994

The role of ventilation in providing an energy efficient, optimum indoor environment is the focus of the fifteenth annual conference of the AIVC. Ventilation as an IAQ control, ventilation strategies and minimum rates, and external pollutants will be among the topics discussed. *See Indoor Air Quality Update*, July 1994.

[24] Environmental Risk Assessment . . . Politics and Policymaking, *Inside EPA*, Arlington, Virginia, November 1-2, 1994

The announcement for this conference notes that EPA's "new cancer classification guidelines are expected to appear in the fall," and that "[v]irtually every EPA program dealing with risk is under review for significant reforms." While specific topics were not reported, the announcement indicates that speakers will be drawn from EPA, "Capitol Hill," industry, environmental groups, and state government. *See Inside EPA*, July 22, 1994.

[25] Healthy Buildings '95, International Council for Building Research Studies and Documentation and International Society of Indoor Air Quality and Climate, Milan, Italy, September 11-14, 1995

This meeting will cover 13 major scientific topics, according to an early conference announcement. They will include radiation in buildings, healthy buildings in temperate climates, use of pesticides and other "toxic" chemicals indoors, and HVAC design, operation and maintenance. A session on ETS, coorganized with the World Health Organization and the U.S. EPA, will also be presented. Topics for the ETS session include health issues, exposure assessment, and ventilation issues. Previous Healthy Buildings conferences have been held in Stockholm, Washington, and Budapest.

LUNG CANCER

[26] "Smoking and Health Promotion in Nazi Germany," G.D. Smith, S.A. Strobele, and M. Egger, *Journal of Epidemiology and Community Health* 48: 220-223, 1994 [See Appendix A]

Although this historical review focuses on German efforts to reduce the prevalence of active smoking, the authors mention an early German study that apparently proposed a link between lung cancer in non-smoking women and their husbands' smoking.

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CARDIOVASCULAR ISSUES

[27] **"Active and Passive Smoking Are Associated with Increased Carotid Wall Thickness: The Atherosclerosis Risk in Communities Study," G. Howard, G.L. Burke, M. Szklo, G.S. Tell, J. Eckfeldt, G. Evans, and G. Heiss,** ***Archives of Internal Medicine*** **154: 1277-1282, 1994 [See Appendix A]**

Carotid wall thickness, as an index of atherosclerosis, was measured in smokers, exsmokers, reportedly ETS exposed nonsmokers, and reportedly non-exposed nonsmokers. The authors claim that their data support an association between ETS exposure and carotid wall thickness, and that ETS exposure may be an atherosclerosis risk factor.

[28] **"Plantar or Dorsalis Pedis Artery Bypass in Buerger's Disease," T. Sasajima, Y. Kubo, Y. Izumi, M. Inaba, and K. Goh,** ***Annals of Vascular Surgery*** **8: 248-257, 1994 [See Appendix A]**

While this article deals with the surgical treatment of thromboangiitis obliterans (Buerger's disease), the authors mention that ETS exposure may be considered as a clinical criterion in the diagnosis and treatment of this condition.

[29] **"Passive Smoking as a Cause of Heart Disease," A.J. Wells,** ***Journal of the American College of Cardiology*** **24: 546-554, 1994 [See Appendix A]**

In this paper, A. Judson Wells, author of a 1988 paper estimating mortality due to ETS exposure, claims to calculate, using the methodology applied in the EPA Risk Assessment on ETS, that 62,000 ischemic heart disease deaths were associated with ETS exposure in the United States in 1985.

RESPIRATORY DISEASES AND CONDITIONS —CHILDREN

[30] **"A Longitudinal Study of the Effects of Parental Smoking on Pulmonary Function in Children 6-18 Years," X. Wang, D. Wypij, D.R. Gold, F.E. Speizer, J.H. Ware, B.G. Ferris, and D.W. Dockery,** ***American Journal of Respiratory and Critical Care Medicine*** **149: 1420-1425, 1994 [See Appendix A]**

The authors of this paper, reporting on data from the Harvard Six Cities Study, claim that decrements in pulmonary function in children were associated both with maternal smoking during pregnancy and with current maternal smoking. They claim that such decrements may persist into adulthood and may be associated with risk of COPD.

OTHER CANCERS

[31] **"Alcohol, Smoking, Passive Smoking and Caffeine in Relation to Breast Cancer Risk in Young Women," S.J. Smith, J.M. Deacon, C.E.D. Chilvers and members of the U.K. National Case-Control Study Group,** ***British Journal of Cancer*** **70: 112-119, 1994 [See Appendix A]**

Based on a subset of data collected on young breast cancer cases and their controls in the United Kingdom, the authors report no consistent elevation or dose-response trend for breast cancer risk associated with ETS exposure. They conclude that, based on these data and on their data suggesting no increased risk among *active* smokers, that an effect of ETS exposure on breast cancer is "implausible."

OTHER HEALTH ISSUES

[32] **"Effects of Prenatal Exposure to Tobacco Smoke on Developmental Stability in Children," J.A. Kieser and H.T. Groeneveld,** ***Journal of Craniofacial Genetics and Developmental Biology*** **14: 43-47, 1994 [See Appendix A]**

The authors of this South African study claim that measurements of dental development suggest that children whose fathers smoked during their mothers' pregnancies, as well as children whose mothers and fathers both smoked during pregnancy, had experienced some level of "developmental stress" while a fetus. However, when additional factors were taken into account, the claimed association disappeared.

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ETS EXPOSURE AND MONITORING

[33] "Maternal Passive Smoking: A Potential Fetal Risk," J.E. Frank, H. Johnson, V. Flanagan, and D. Hoffman, *Pediatric Research* 35 (4 Part 2): 269A, 1994 [See Appendix A]

In this meeting abstract, the authors report on cotinine levels detected in samples of fetal meconium (fecal matter). They claim that cotinine may be "a marker of potential risk."

SMOKING POLICIES AND RELATED ISSUES

[34] "Do Smoking Ordinances Protect Non-Smokers from Environmental Tobacco Smoke at Work?" J.P. Pierce, T.G. Shanks, M. Pertschuk, E. Gilpin, D. Shopland, M. Johnson, and D. Bal, *Tobacco Control* 3: 15-20, 1994 [See Appendix A]

Based on data from the 1990-1991 California Tobacco Survey, the authors report a relationship between the strength of the local smoking ordinance and the degree of limitation of reported workplace ETS exposure. They claim that ETS exposure was likely to be less in workplaces with smoking restrictions if the local smoking ordinance was strong.

IN EUROPE & AROUND THE WORLD

REGULATORY AND LEGISLATIVE MATTERS

CANADA

[35] City Council May Revive Effort to Ban Smoking

The Scarborough Council reportedly may make another attempt to ban smoking in all enclosed public areas following the expected approval early this fall of provincial legislation that will allow municipalities to pass their own antismoking bylaws.

The council had approved such a ban in principle in 1993, but it required special legislative approval, which was denied earlier this summer by the province's standing committee on regulations and private bills.

The province's denial was said to have been welcome news for members of the Canadian and Ontario restaurants associations, who had said a ban would threaten 9,200 restaurant jobs across the city by moving smokers across city borders to restaurants in neighboring municipalities.

If city councillors decide to re-introduce the ban by way of a bylaw, it may still require provincial approval. *See The Toronto Star*, August 4, 1994.

CZECH REPUBLIC

[36] Government Officials Face Smoking Ban

A press report indicates that officials of the Czech Republic would be prohibited from smoking in public if the parliament approves a proposal it has received from the government. The proposal was one of several related to tobacco the government submitted. The other proposals, if approved, would restrict tobacco advertising to point of sale, ban cigarette machines, prohibit the use of cigarette brand names for selling non-tobacco products and raise the minimum age for buying tobacco products to 18 from 16. *See Euromarketing*, July 26, 1994.

MALAYSIA

[37] Smoking Ban to Be Extended to Malls

The smoking ban in effect for certain public places soon will be extended to shopping complexes at the request of members of the public, according to reports of a statement by Malaysian Health Minister Datuk Lee Kim Sai, who said his ministry would assist in enforcing the ban.

Under the Control of Tobacco Product Regulations 1993, a person can be fined M$50 for smoking in air-conditioned restaurants, hospitals, clinics, maternity homes, amusement centers, public lifts and public transport. Owners of these premises can also be fined M$50 for failing to ensure compliance with the law. Those charged in court can be fined up to M$5,000, jailed two years, or both. Datuk Lee reportedly said that the smoking bans might be extended to cover more areas such as ballrooms during private functions.

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In an earlier news report, the antismoking drive was said to have been given a boost with the deployment of more health officers to cite offenders. The same report quoted Datuk Lee as stating that 1,045 officers had been authorized to enforce the ban. When the antismoking law was enforced on May 15, the ministry had only 315 officers empowered to cite violators.

During operations from May 15 to June 25, 11 people purportedly were issued compound summonses for smoking in prohibited areas, and 18 others were issued warnings. Datuk Lee was quoted as stating, "The small number of summonses issued is an indication of the emphasis given to educating rather than penalizing offenders." *See The Straits Times*, July 16, 1994.

SWEDEN

[38] New Tobacco Products Law Said to be Difficult to Enforce

A member of the environmental board of the city of Malmo has publicly stated that the new law on tobacco products is difficult to interpret because of certain exemptions to the general prohibition of smoking on premises to which the public has access. City authorities reportedly have received approximately 10 complaints from individuals claiming that they have been exposed to tobacco smoke in places where it should be prohibited. One complaint, for example, filed against a bingo hall was resolved by dividing the space between smokers and nonsmokers. *See Sydsvenska Dagbladet*, July 31, 1994.

ETS-RELATED LITIGATION NOT INVOLVING CIGARETTE MANUFACTURERS

AUSTRALIA

[39] *Gill v. Electricity Trust of South Australia* (South Australia Workers Compensation Review Panel) (decision date unknown)

A nonsmoking worker who claimed that exposure to ETS in the workplace caused him to suffer respiratory injuries has recovered AUS$19,981 for what was found to be a 34 percent reduction in his ventilatory capacity and a permanent sensitivity to ETS. For some 25 years, the worker was allegedly exposed to the smoke of coworkers for up to two or two and a half hours each day while travelling in trucks. He first experienced shortness of breath and breathing problems in 1980, at which time he was allegedly told by doctors that he had symptoms typical of a heavy smoker. The review officer found that, "The evidence is that Mr. Gill's respiratory problems may well have had their origin in exposure to cigarette smoke of the amount described."

OTHER DEVELOPMENTS

DENMARK

[40] Retail Chain Modifies Smoking Policy

A press report indicates that the corporate management of the retail chain Dansk Supermarked has cancelled the nonsmoking policy it put into effect at its warehouse outside of Arhus in February 1994. The approximately 100 employees at the warehouse are now entitled to a five-minute break every hour, during which they may smoke in certain parts of the premises. *See Berlingske Tidene*, July 29, 1994.

NORWAY

[41] Trade and Industry Adopting Nonsmoking Trend

According to a newspaper report, many Norwegian companies have chosen to implement more restrictive measures than those required by law. The report notes that the goal of several major groups is to be become totally smokefree. In fact, some companies apparently have prohibited smoking both indoors and outdoors and grant extra holidays to nonsmoking employees.

Among the companies and organizations listed in the report as having introduced smoking bans are the University of Oslo, Hydro Aluminum, Conoco and a number of municipal institutions and hospitals. *See Arbeiderbladet*, July 27, 1994.

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UNITED KINGDOM

[42] Companies Said to Favor Nonsmoking Job Candidates

Nearly one-third of the companies surveyed by Britain's largest employment agency purportedly would hire a nonsmoker rather than a smoker if they had two otherwise equally qualified job candidates.

The survey results are said to reflect a fairly recent change in employer attitudes. Of the 731 companies questioned by Reed Personnel Services, 77 percent reportedly said they thought attitudes towards smokers in the workplace had become less favorable in the past five years, primarily because of the fear of future litigation and the amount of time lost through smoking breaks.

Reaction of anti- and pro-smoking groups to the survey results was reportedly divided. Stephen Woodward, deputy director of ASH, said the public had forced the change based on concerns about the alleged risks of exposure to tobacco smoke at the workplace, whereas Chris Tame, director of FOREST, described the report's findings as "morally obnoxious" and "a revival of Victorian paternalism."

Reaction among medical and other employer groups was equally divided. A spokesman for the British Medical Association, which has banned smoking in its building, was quoting as stating that it was sensible for a firm to recruit a nonsmoker "who is less likely to be off sick and is no danger to anyone else through smoking." Transport union TGWU stated that it preferred people be chosen on their merits and that it would be fairer if workplaces advertise that they were nonsmoking. "That would make things a lot more open and above-board," according to a union representative. A spokeswoman for the National Westminster Bank was quoted to say that, "As far as we're concerned it's inapplicable. We wouldn't even ask someone as part of our recruitment process." *See The Independent, The Sunday Telegraph,* and *The Observer,* July 31, 1994.

[43] Bakery Imposes New Smoking Rules

Effective in three months, Allied Bakeries employees in Reading caught smoking on the premises will lose their jobs, according to a press report. Until the smoking ban goes into effect, employees who want to smoke must go outside to the furthest corner of the car park, where they may stand or sit in a tiny square marked in red. The measures were introduced this month after the employees were told that smoking would no longer be allowed in a special section of the canteen. *See Evening Standard,* July 22, 1994.

WORLD AIRLINE NEWS

[44] AMA Criticizes Airlines for Promoting Smoking Flights

The Australian Medical Association (AMA) reportedly has criticized in advertisements the country's two international airlines, Qantas and Ansett, for promoting flights to Asia on which smoking is permitted. The ads are claimed to be an attempt to divert business from Cathay Pacific and Singapore Airlines, both of which have nonsmoking policies on other international flights. Health Minister Carmen Lawrence asserted that Ansett could face workers' compensation claims as a result of its decision to allow smoking on those flights.

AMA president Dr. Brendan Nelson was quoted as describing Qantas' advertising campaign to promote smoking sections on its flights to Singapore as "a farce of the anti-tobacco sentiment" the airline expressed when it signed an international convention to phase out smoking on all flights by July 1996. A Qantas spokesman expressed the airline's surprise at the AMA's reaction "as smoking was not the main thrust of our advertising campaign which ended last month. As far as Singapore is concerned, smoking has always been available on some services. In our recent campaign, we mentioned this as an option."

Qantas is said to operate a total of 52 flights a week on the Australia-Singapore run, 10 of which have smoking sections. Qantas currently has smoking flights to Hong Kong and Indonesia, but this will change August 28 when all its flights to Hong Kong, Jakarta, Bali and Manila will be nonsmoking. Starting in late October, its Australia-London flights will also be smokefree.

The AMA's criticisms of Ansett reportedly was directed at its new route to Osaka starting September 4, which will have smoking sections. An Ansett spokesman was quoted as stating that the airline had done "an enormous amount of research and our main market — Japanese passengers — wants the option of a smoking section on our flights. It is a purely com-

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